

FILED 11 MAR 23 10:45 USDC-ORM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

DENNIS RUSSELL HOOPER,

Civil No. 10-3065-CL

Plaintiff,

ORDER

v.

MICHAEL WINTERS; et al.,

Defendants.

PANNER, District Judge:

Plaintiff has filed a Motion for Dismissal of Defendants Cascade Management, Inc. and Mary Rosas (#44). Defendants do not oppose the motion.

DISCUSSION

After a defendant has served an answer or motion for summary judgment, an action may be dismissed voluntarily at plaintiff's request only by order of the court and "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). In the Ninth Circuit, "Although costs and attorney fees are often imposed upon a plaintiff who is granted a voluntary dismissal under Fed.R.Civ.P. 41(a)(2), no circuit court has held that payment of the defendant's costs and attorney fees is a prerequisite to an order granting voluntary dismissal." Stevedoring Servs. of Am. v.

Armilla Int'l B.V., 889 F.2d 919, 921 (9th Cir. 1989) (and cases cited); Puerto Rico Maritime Shipping Auth. v. Leith, 668 F.2d 46, 51 (1st Cir. 1981) (cited with approval by Stevedoring Services) [district court did not abuse its discretion in granting voluntary dismissal without imposing costs and attorney's fees]; see 9 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2366 (3d ed. 2008).

The court finds that, in the circumstances, this action should be dismissed without prejudice and without costs imposed.

ORDER

For the foregoing reasons, Plaintiff's Motion for Dismissal of Defendants Cascade Management, Inc. and Mary Rosas (#44) is granted; this action is dismissed as to Defendants Cascade Management, Inc. and Mary Rosas without prejudice and without costs imposed on any party.

DATED this 23 day of March, 2011.


UNITED STATES DISTRICT JUDGE